

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

UNITED STATES OF AMERICA,

vs.

FRANK DeSIMONE,

Defendant.

DOCKET NO. 3:12-CR-239

TRANSCRIPT OF SENTENCING HEARING
BEFORE THE HONORABLE GRAHAM C. MULLEN
UNITED STATES SENIOR DISTRICT COURT JUDGE
WEDNESDAY, FEBRUARY 18, 2015 AT 10:37 A.M.

APPEARANCES:

On Behalf of the Government:

MARIA KATHLEEN VENTO, ASSISTANT U.S. ATTORNEY
U.S. Attorney's Office
227 W. Trade Street, Suite 1650
Charlotte, North Carolina 28202

On Behalf of the Defendant:

R. BRENT WALKER, ESQ.
212 S. Tryon Street, Suite 1360
Charlotte, North Carolina 28281

JILLIAN M. TURNER, RMR, CRR, CLR
Official Court Reporter
United States District Court
Charlotte, North Carolina

1 (Wednesday, February 18, 2015 at 10:37 a.m.)

2 P R O C E E D I N G S

3 (Counsel and defendant present.)

4 THE COURT: Good morning. This is the matter of
5 the United States v. Frank DeSimone.

6 Mr. DeSimone signed a plea agreement November 2013.
7 Mr. DeSimone, would you please stand. You signed a plea
8 agreement and appeared before a magistrate judge and entered
9 a plea of guilty.

10 Were your answers true and correct when you
11 answered the magistrate judge's questions?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Please speak up so everyone can hear
14 you.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. Mr. Walker.

17 MR. WALKER: Good morning, Your Honor.

18 THE COURT: Good morning. Do you believe your
19 client fully understood the questions that the magistrate
20 asked him?

21 MR. WALKER: Yes, I do, Your Honor.

22 THE COURT: Mr. DeSimone, did you answer those
23 questions the way you did, and are you going forward with the
24 guilty plea today because you did commit the crime charged?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Then based upon the representations and
2 the answers given by the defendant at the Rule 11 hearing
3 before the magistrate judge, the Court affirms the magistrate
4 judge's finding that the defendant's plea is knowingly and
5 voluntarily made. The Court also affirms the magistrate
6 judge's finding that the defendant understood the charges,
7 the potential penalties and consequences of his plea.
8 Accordingly, the Court affirms the magistrate judge's
9 acceptance of the defendant's plea of guilty at the Rule 11
10 hearing.

11 There is no factual basis filed, is there?

12 MS. VENTO: That's correct, Your Honor.

13 THE COURT: All right. Then based upon the
14 presentence report, there are no objections to the
15 presentence report that address the factual basis that's put
16 forward in the presentence report. Accordingly, based upon
17 the facts and offense conduct set forth in the presentence
18 report, defendant's plea of guilty, and the defendant's
19 admissions, the Court finds that there is a factual basis for
20 the entry of the plea of guilty and enters a verdict of
21 guilty.

22 Mr. DeSimone, the probation office has issued a
23 presentence investigation report. Have you had an
24 opportunity to go over that presentence report with your
25 attorney?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Mr. Walker, have you gone over that
3 report with your client, and are you satisfied your client
4 understands that report?

5 MR. WALKER: Yes, I have and, yes, I am, Your
6 Honor.

7 THE COURT: All right. Have you reviewed the
8 response the probation officer made to the objections that
9 you filed?

10 MR. WALKER: Yes, I have, Your Honor. At this time
11 I had spoken with Madam U.S. Attorney. I would like to
12 withdraw the objection for the two points, Your Honor,
13 because that was specifically laid out in the plea agreement.

14 THE COURT: The plea agreement.

15 MR. WALKER: Yes, Your Honor. So I would like to
16 amend that and withdraw that, Your Honor.

17 THE COURT: All right. Then hearing no reason to
18 do otherwise, I'm going to adopt the response the probation
19 officer made to the objections and find that those are
20 properly dealt with, and I will adopt the information
21 contained in the presentence report for the purposes of
22 applying the guidelines and find that the appropriate
23 guidelines offense level in this case is 24, with a criminal
24 history category I, and a guideline sentencing range of 51 to
25 63 months. I note that none of the objections that were made

1 by the defendant -- and the Government made no objections --
2 that none of the objections that the defendant raised would
3 have affected the guideline range as set forth in the
4 presentence report.

5 There's no 5K motion in this case?

6 MS. VENTO: That's correct, Your Honor.

7 THE COURT: And you have filed a request for a
8 variance, Mr. Walker. Do you wish to be heard?

9 MR. WALKER: Yes, I do, Your Honor. Very briefly,
10 Your Honor.

11 On Mr. DeSimone's behalf, there was the issue of
12 the alleged second victim by the initials of A.K. We did
13 object to that portion of it, Your Honor. Although, as the
14 Court indicated, will not affect the levels, Your Honor,
15 because it would be an additional loss amount of 40,000. For
16 the record, Mr. DeSimone did object to the defendant A.K.
17 being listed as one of his potential defendants. So we want
18 that just for the record, Your Honor.

19 MS. VENTO: Yes, sir. As I understand the
20 defendant's objection, is that Ms. Hunt was perhaps more
21 involved in taking A.K.'s money. And certainly Ms. Hunt was
22 also involved in it, but that does not mean that's at the
23 exclusion of the defendant. As the victim's own submission
24 to the Court makes clear, it was this defendant was, in fact,
25 involved in her decision to part with the money and her

1 becoming involved in the enterprise as a victim. And, in
2 fact, Ms. Kubin was interviewed by law enforcement and gave a
3 quite lengthy statement explaining the defendant's
4 involvement years earlier in the sovereign equity phase of
5 the investment fraud in which he was trying to do another
6 project with James Tyson and Victoria Hunt. That he said he
7 would take victim A.K. under his work and try to teach her
8 finance. That he was aware of this -- of the fact that the
9 enterprise was taking out credit cards and other things in
10 her name and that she suffered this loss.

11 And so we would -- we would submit, Your Honor,
12 that there's more than sufficient evidence to show that this
13 defendant was in part responsible for the loss that was seen
14 to A.K. Certainly not solely, but in part responsible for
15 that.

16 THE COURT: The \$40,000 loss that this woman
17 suffered is reasonably foreseeable to the conduct of this
18 man, among other things. So I'm going to overrule that
19 objection.

20 Now, do you wish to be heard with reference to a
21 request for a variance?

22 MR. WALKER: Yes, Your Honor, we do.

23 THE COURT: All right. You may proceed at this
24 time.

25 MR. WALKER: May it please the Court. Your Honor,

1 I'm sure the Court has reviewed my request that I filed.

2 Mr. DeSimone is 42 years old. He's lived his whole
3 life without any criminal history, Your Honor. And he's
4 before Your Honor and he's asking the Court to consider and
5 to downward depart his sentence, Your Honor.

6 Judge, he's also -- there have been several
7 character letters written on Mr. DeSimone's behalf, which
8 would give another side.

9 THE COURT: I've read all of it.

10 MR. WALKER: Yes, sir.

11 And, Your Honor, if I may. If the individuals who
12 wrote those character letters would please stand. They're
13 all here in support of Mr. DeSimone, Your Honor. Thank you
14 all. And if allowed, they'd be glad to speak on his behalf.
15 They pretty much said what they put in their letters comes
16 from their heart, Your Honor.

17 Judge, basically, I'd like ask the Court to look at
18 the 3553(a) factors in Mr. DeSimone's case, the nature and
19 the history of -- nature and circumstances and the history of
20 it, and we're asking the Court to depart.

21 Judge, Mr. DeSimone does not have any criminal
22 history, which in federal court is generally pretty rare,
23 especially being 42 years old, Judge. He's worked all of his
24 life -- all of his adult life. He's a sole provider for his
25 family, his children, and also his mother, Your Honor, who is

1 now -- who is disabled but is going through some serious
2 issues, Your Honor, but she is placed and living with him,
3 Your Honor.

4 Judge, I'd like to draw the attention of the Court
5 to retribution -- excuse me, restitution, Your Honor.
6 Restitution in this case it's \$4 million, assuming argument
7 of maybe 4,040,000, Judge. However, what distinguishes
8 Mr. DeSimone from the majority of individuals who come before
9 you and ask for a variance, Judge, is that Mr. DeSimone has
10 begun the repayment process. There's been over \$300,000
11 repaid to the victim, Your Honor, in this case. Mr. DeSimone
12 is currently employed, self-employed. He's doing remodeling
13 and several other ventures to support his family but also in
14 hopes of repaying this restitution amount, Your Honor. I
15 would contend to the Court that the 300-some thousand is a
16 significant step and shows the good faith of Mr. DeSimone in
17 trying to make the alleged victim whole, Your Honor.

18 Judge, we understand 4 million is a large amount.
19 But normally when I get to this stage, Your Honor, I'm asking
20 the Court to depart or give a variance, and I don't have the
21 facts that this individual has paid almost 10 percent of it
22 back, Your Honor. Judge, what I asked for in my motion was
23 the Court to consider departing downward to the point where
24 Mr. DeSimone could possibly be in a probationary home
25 detention-type situation. The reason we ask for that is

1 because Mr. DeSimone has begun to repay this -- the
2 restitution, Your Honor, and this would allow him to continue
3 repaying the restitution, Your Honor, if the Court would
4 fashion a sentence such as that.

5 One of the factors -- I believe it's factor
6 number 7 -- Judge, in 3553(a) speaks of basically repaying
7 the victim, ways to repay the victim, Your Honor, and this --
8 okay. "The need to provide restitution to any victims of the
9 offense" is how number 7 is worded, Your Honor. And in this
10 case, if the Court were to fashion a sentence, a sentence of
11 probation or home detention for Mr. DeSimone, that would fall
12 in line with number 7, Your Honor.

13 We also ask the Court to consider unwarranted
14 sentencing disparities among defendants with similar records.
15 Your Honor, again, Mr. DeSimone has no record in this case.
16 And even in the light most favorable to the Government,
17 they -- the Government filed a sentencing memorandum also in
18 which they laid out almost 12 pages of sentencing memorandum,
19 but in that 12 pages, Judge, the United States lays out and
20 lists pretty much the depth of this conspiracy. It was a
21 large conspiracy. I believe it was mentioned in the
22 Government's -- in the Government's motion that this is one
23 of the largest in the country. There were some 90-some
24 victims, 50-some of them -- excuse me, a large number of them
25 have cooperated, have pled, or been found guilty. A large

1 number of them were given 5Ks -- 5K1s. There was a lot of
2 cooperation, Your Honor. And I bring that to the Court's
3 attention because, Your Honor, with all the years and all of
4 the research and all of the resources at the Government's --
5 you know, that the Government has, they contend that this has
6 been going on for years. It was a huge operation, a huge
7 enterprise. There was millions -- I believe 75 million was
8 the amount that they had mentioned in their motion, but over
9 \$75 million's worth of loss and so many individuals.

10 Judge, I bring that to the Court's attention
11 because with all the years that this conspiracy allegedly was
12 going on and all the cooperation, all the co-defendants,
13 Mr. DeSimone's name has only come up twice at best, Your
14 Honor. We have the -- we do have the 4 million loss, which
15 Mr. DeSimone pled to, and we have the 40,000 from the victim
16 A.K.

17 Judge, I point that out because Mr. DeSimone is
18 not -- I would contend to the Court he is not a major player
19 in this. And I would also further point out to the Court
20 that generally in these type of indictments they rank the
21 individuals from first to twenty whatever based on their
22 culpability and leadership roles. Mr. DeSimone is number 20,
23 Your Honor, in this. And, Your Honor, we'd ask the Court to
24 take that into consideration.

25 Further, Your Honor, we'd ask the Court to consider

1 fashioning a sentence that would allow him to continue
2 providing support for his family and continue with his
3 business in order that he may continue repaying the alleged
4 victim Mr. Taylor in this, Your Honor.

5 THE COURT: Well, I object to you saying "alleged
6 victim."

7 MR. WALKER: Your Honor, I --

8 THE COURT: Mr. Taylor is --

9 MR. WALKER: Is a victim.

10 THE COURT: -- is clearly a victim.

11 MR. WALKER: Yes, Your Honor. I -- I withdraw
12 that.

13 THE COURT: I appreciate the effort.

14 MR. WALKER: Yes.

15 THE COURT: But Mr. Taylor is clearly a victim.
16 It's not quite four million. It's three million three and
17 change.

18 MR. WALKER: Yes, Your Honor.

19 THE COURT: And we'll reserve Mr. DeSimone for
20 allocution if he wishes to make that until after I hear from
21 the Government.

22 Do you wish to be heard, Ms. Vento?

23 MS. VENTO: Yes, Your Honor. Initially I would
24 note there is an individual, Jeffrey and Beverly Henley, who
25 are in the courtroom. They are not specifically victims of

1 the crimes charged in this indictment, but they have just
2 handed me a letter describing their victimization through
3 other activities of Mr. DeSimone, and so I wanted to make the
4 Court aware of that and give the Court an option.

5 THE COURT: Do they wish to be heard?

6 MR. MILLS: Please the Court. I'm William Mills of
7 the Cabarrus County Bar. I am the -- I'm the administrator
8 C.T.A. of the Estate of Tim Hurst, who's a victim, along with
9 the Henleys, of the civil fraud that Mrs. Henley wishes to
10 call to the Court's attention, and I'm here for that purpose,
11 Your Honor.

12 THE COURT: Ms. Vento, are there any other
13 identifiable victims in this case?

14 MS. VENTO: There are not, sir.

15 MR. MILLS: The Estate of Tim Hurst. Maybe I
16 didn't understand the question.

17 THE COURT: All right.

18 MS. VENTO: Your Honor, to respond briefly to a
19 number of points defense counsel made. A few just very
20 quickly.

21 Defendants in this indictment were listed
22 alphabetically, not by level of culpability. The fact that
23 this level is twentieth doesn't have anything to do with
24 where he falls in this particular scheme.

25 This is the second defendant in the RICO indictment

1 in the case to be charged with -- to be sentenced for his
2 involvement in the securities or the investment fraud side as
3 opposed to the mortgage side fraud. As the Court is, of
4 course, aware, Travis Bumpers was the first, and he received
5 a sentence of 66 months after a 5K for his cooperation with
6 the Government.

7 This defendant had the opportunity to cooperate
8 with the Government, and I think it is worth discussing
9 briefly. Certainly I've gotten into it in the sentencing
10 memorandum, but it's worth discussing briefly because it does
11 go to his history and characteristics.

12 He was given the opportunity to come in and to help
13 the Government and to help himself, and he simply couldn't
14 stop himself from lying, to be brief and candid. He said
15 things that were untrue. The Government would confront him
16 with documents. He would have to admit what he just said was
17 not true, and this happened repeatedly to the point where the
18 Government made the decision it simply could not use him as a
19 witness. It's one thing when it sometimes takes people a
20 little bit to tell the whole story; it's another when they're
21 saying things untrue and easily be disproven. And that is
22 why this defendant has not received a 5K motion.

23 It is also something that gives the Government
24 concern in regards to looking at his history and
25 characteristics and the issue of specific deterrence, because

1 while he has pled guilty and he has accepted responsibility
2 for his role in this, he seems to be unable to stop himself
3 from trying to point the finger at other people and minimize
4 what he sees his own role and to lie when he thinks he gets
5 away to the extent of his role in the fraud overall.

6 I would respectfully submit the Court should
7 consider in evaluating the defendant's history and nature and
8 circumstances and the need for specific deterrence in this
9 regard. Certainly there is much positive to say about this
10 defendant's history and characteristics. I, too, have read
11 all of the letters submitted by his family and friends, and
12 they tell a story of him that is, frankly, completely
13 different than the story that is told by the victims, and
14 certainly say much positive about him. But that has to be
15 balanced against the nature and circumstances of the offense,
16 and the nature and circumstances of the offense here are
17 incredibly serious.

18 This is a defendant -- while there were others that
19 certainly were involved in causing more people to part with
20 their money, this is a defendant who was involved in just one
21 isolated incident. He was involved with these people over a
22 number of years. He knew they were under investigation. He
23 knew they had failed to follow through on any of their
24 promises from the first phase and, nevertheless, he went to
25 Art Taylor and he vouched for these people and he convinced

1 him to transfer \$4 million to them.

2 This defendant does have one of the highest losses
3 because of the amount of money he was able to cause that one
4 individual to part with. Albeit, he does not have a victim
5 enhancement because it was a smaller number of victims with
6 larger money as opposed to a larger number of victims with
7 less money. But this is a defendant that not only knew that
8 he was engaged in fraud with Victoria Hunt and James Tyson,
9 Jr., but knew there was an investigation of that fraud, lied
10 to the first victim, Ms. Kubin, about that and then caused
11 another defendant to part with more than \$4 million.

12 I would submit that, Your Honor, that shows both a
13 very serious nature and circumstances of the offense, but
14 it's also telling with regards to the history and
15 characteristics of this defendant and the need to protect the
16 public from further crimes and afford not just general
17 deterrence, but also some measure of specific deterrence.

18 As the Court is aware from the letter I just passed
19 up in the presentence report, there are two victims in this
20 particular case. There is also evidence to suggest that this
21 defendant was involved in other fraud, as evidenced by the
22 letter and the civil claims that have come through, and he
23 has not otherwise led a law abiding life.

24 Now, because he pled guilty, the Government didn't
25 continue to investigate all those additional things and

1 that's why there's not more with regards to this. That's
2 simply the way. When the defendant pleads guilty, we stop
3 looking. But I do think what is set forth in the PSR and
4 that letter is something that the Court can and should
5 consider in fashioning the appropriate sentence.

6 The Government would -- I would also -- as the
7 Court is aware, a sentence of probation or home detention
8 would be an extraordinary departure, far greater than anyone
9 else in the case, I believe, except for perhaps a woman who
10 was terminally ill and would result I think I can fairly say
11 in unwarranted sentencing disparities.

12 The Government would submit that a sentence of 54
13 months, which is the low end of the advisory guideline range,
14 would be sufficient, but not necessary -- but not greater
15 than necessary, to serve the sentencing purposes in these
16 circumstances. Particularly acknowledging the history and
17 characteristics of this defendant and the seriousness of the
18 crimes he committed, the need to promote respect for the law,
19 and the need -- which I don't think is often in white collar
20 cases but is here -- to provide some measure of specific
21 deterrence in addition to the issue of general deterrence,
22 and we would ask the Court to impose a sentence in that
23 range.

24 THE COURT: Mr. DeSimone, you have a right to
25 address the Court in allocution if you so choose. Do you

1 have anything you wish to say?

2 MR. WALKER: May I have just a brief moment, Your
3 Honor?

4 THE COURT: You may.

5 MR. WALKER: Thank you, Your Honor. He would like
6 to briefly address the Court, Your Honor.

7 THE DEFENDANT: Your Honor, I pled guilty to take
8 responsibility for Mr. Taylor's loss. Mr. Taylor invested in
9 us, not necessarily in the Prestige Group, and I fully intend
10 to repay him and anybody else, including people who may or
11 may not be involved in this case that may feel we owe them
12 money from this real estate project that we were involved in.

13 I've never regretted anything more in my life and
14 for the last -- I don't know how many years it's been
15 actually, Your Honor, since the day I -- I was notified about
16 all of this. It's been on my mind every second of every day.
17 And I'm already serving a sentence of public humiliation,
18 familial humiliation, and all I want is the opportunity to
19 repay my debts sooner than later. That's it.

20 THE COURT: Have Mr. Taylor and Ms. Kubin been
21 given an opportunity to come in and be here?

22 MS. VENTO: Yes, sir, they have. Mr. Taylor's
23 lawyer is here today, but he was unable to be here.

24 THE COURT: Does he wish to say anything on behalf
25 of Mr. Taylor?

1 MS. VENTO: Yes, he would like to, Your Honor.

2 THE COURT: All right. Mr. Brackett, come on
3 forward.

4 MR. BRACKETT: Your Honor, I am here on behalf of
5 Mark Taylor. I've been involved representing Mr. Taylor
6 since this whole scheme started to unravel several years ago.
7 Part of that included handling a civil action involving
8 Mr. DeSimone, Victoria Hunt, Toby Hunter, and Prestige.

9 Your Honor, I agree with the characterization by
10 the assistant U.S. attorney regarding Mr. DeSimone in the
11 fact that he can't stop himself from lying. The civil action
12 we handled was much more involved because of Mr. DeSimone's
13 very vehement denials of any wrongdoing, denials of knowledge
14 regarding actions that took place with Mr. Taylor's money.

15 Mr. Taylor's money was supposed to be held in
16 escrow under what was called a "control access account" that
17 provided that if at any point its balance dropped by \$25,000,
18 it was all to be immediately liquidated, returned to
19 Mr. Taylor. Once we got into the documents, we discovered
20 that within less than a day of the time that money was placed
21 into escrow it began moving out, including funds flowing to
22 Mr. DeSimone.

23 Mr. DeSimone not only in the civil case denied his
24 involvement, he filed a counterclaim against others
25 vehemently denying his involvement. By digging through the

1 paperwork, we were able to establish his involvement and the
2 flow of funds.

3 I will say, Your Honor, Mr. Taylor is not here
4 today because of a commitment he has to his job coaching high
5 school students in New Jersey. It's good that he is not here
6 because I can't imagine what his reaction would have been to
7 the representation that Mr. DeSimone has repaid money to the
8 victim.

9 There was over \$300,000 returned to Mr. Taylor.
10 The source of those funds was a hedge fund account in which
11 some of the funds had been placed in connection with the
12 civil case. We got an injunction that froze that account.
13 When that account was ultimately -- those funds were turned
14 over to the Government to be paid back to the victim. The
15 payment that came out came -- it was made in the name of
16 Mr. DeSimone's company. That check was sent to me.
17 Mr. DeSimone did, in fact, endorse that check so that those
18 funds made it back to Mr. Taylor. Other than the turnover of
19 those funds, there has not been one penny paid towards
20 restitution.

21 Now, if Mr. Taylor were here, I think he would have
22 had that to say and much more, but Your Honor needed to be
23 aware of those circumstances.

24 THE COURT: All right. Thank you, sir.

25 In this case, guided by U.S. v. *Booker* and Fourth

1 Circuit decision *U.S. v. Green*, I understand the Sentencing
2 Guidelines are only advisory, but I also know that I am
3 required to consult those guidelines and that they do provide
4 at least rough guidance as to what would be a reasonable
5 sentence, and that I am advised to attempt to come up with a
6 sentence that is sufficient, but not greater than necessary,
7 to accomplish the sentencing factors in 18 U.S.C. 3553(a).

8 I believe the nature and circumstances of the
9 offense are adequately stated in the Government's sentencing
10 memorandum, and I believe that the history and circumstances
11 of the defendant are adequately set forth in the presentence
12 report and all of the letters in support that the Court has
13 received. It seems clear that much like the Roman god Janus,
14 Mr. DeSimone has one face for some group of people, including
15 these here supporting him, and quite another for people who
16 deal with him in business.

17 I note the amount of charitable conduct, including
18 assistance to a neighbor who had her feet operated on.
19 Nevertheless, this is a serious offense and some sentence to
20 promote respect for the law and to provide just punishment is
21 required in this case. Whether adequate deterrence to
22 criminal conduct in general is available is a matter for
23 debate, but certainly the fact that Mr. DeSimone will receive
24 a sentence in this case for whatever deterrent factor that
25 possesses is out there. Regrettably, I believe that an

1 active sentence is necessary to protect the public from
2 further crimes of the defendant based upon the information
3 that we've received as to other civil fraud and other cases
4 that was going on contemporaneously with the offense conduct
5 here.

6 I don't think there's any need for educational or
7 vocational training, medical care, or other correctional
8 treatment. Although, Mr. DeSimone -- the Court would
9 recommend, Madam Clerk, that Mr. DeSimone be permitted to
10 participate in any educational or vocational training that's
11 available within the system.

12 There is a significant factor here, which is to
13 avoid unwarranted sentencing disparities among defendants.
14 Mr. DeSimone was in on the securities fraud part of this deal
15 and not so much the mortgage. But without the securities
16 fraud, without the money that that provided, the other stuff
17 wouldn't have gone on either. So this is not just in
18 isolation. And he knew what was going on.

19 As to providing restitution, any victims in the
20 offense, restitution will be ordered, and he will be ordered
21 to pay at least minimal amounts of money after he is
22 released.

23 Therefore, having considered those factors, I will
24 now state a sentence that I find is sufficient, but not
25 greater than necessary, to accomplish those sentencing

1 factors.

2 I would order that Mr. DeSimone serve a term of
3 incarceration of 51 months in the Bureau of Prisons as
4 designated. He may self-report. He is to serve a sentence
5 of supervised release of two years after he is released from
6 incarceration.

7 He doesn't have the ability to pay a fine. The
8 Court would not require him to pay a fine or income to pay
9 any court-appointed attorney's fees.

10 He is a suitable candidate, as I said, for
11 voluntary surrender.

12 He would be required to support his dependents from
13 prison earnings while incarcerated.

14 And while he's on supervised release, he would be
15 subject to the standard conditions in effect in the Western
16 District of North Carolina, except periodic drug testing
17 mandated by the Violent Crime Control and Law Enforcement Act
18 of 1994 is hereby suspended. This offense is not drug
19 related. The defendant has no current or past history of
20 substance abuse.

21 He owes a special assessment of \$100, which is due
22 and payable immediately.

23 It is further ordered, having determined the amount
24 of restitution, that he shall make restitution in the
25 following amount: To Mark Taylor, 3,323,403.80; to Anita

1 Kubin, \$40,000. Any payment that is not payment in full
2 should be divided up proportionally among the victims named.

3 The defendant is jointly and severally liable with
4 Victoria Hunt, James Tyson, Jr. as to Mr. Taylor and James
5 Tyson, Sr. as to Anita Kubin. And this Court gives notice
6 that this case may involve other defendants who may be held
7 jointly and severally liable for payment of all or part of
8 restitution ordered herein and may order such payment in the
9 future.

10 There's no forfeiture involved in this case that I
11 know of.

12 MS. VENTO: That's correct.

13 THE COURT: The payment of money -- monetary
14 penalties, as I said, is due and payable immediately. What
15 he can't pay he shall pay through the Federal Bureau of
16 Prisons Inmate Financial Responsibility Program.

17 Upon release from imprisonment, any remaining
18 balance shall be paid in monthly installments of no less than
19 \$50 to commence within 60 days until paid in full.

20 Throughout the period of supervision, the probation officer
21 shall monitor the defendant's economic circumstances and
22 shall report to the Court with recommendations, as warranted,
23 any material changes that affect the defendant's ability to
24 pay any court ordered penalties.

25 That is the proposed sentence. Counsel, is there

1 any reason other than what we've already heard about that the
2 Court should not order that sentence imposed as stated?

3 MS. VENTO: No, sir.

4 MR. WALKER: No legal reason, Your Honor.

5 THE COURT: All right. The Court is aware of the
6 impact on Mr. DeSimone's family, and I deeply regret it. I
7 wish he had thought about that before his involvement.

8 MS. VENTO: Your Honor, there are some counts to be
9 dismissed.

10 THE COURT: Say it again.

11 MS. VENTO: There are some counts to be dismissed.

12 THE COURT: And they are?

13 MS. VENTO: Counts Two, Four and Five as to this
14 defendant.

15 THE COURT: Counts Two, Four and Five as to this
16 defendant DeSimone are ordered dismissed on motion of the
17 Government, and the sentence that the Court has stated is
18 ordered imposed as stated.

19 I would entertain, if the Government would look at
20 it, as he is to be designated to self-report. I understand
21 that there are issues regarding his mother and her housing
22 and some difficulties involved in that. So if that's going
23 to present insuperable difficulties for his disabled mother,
24 then, Mr. Walker, you're going to need to contact Ms. Vento,
25 and the two of you can get together and see if there's a

1 possibility of a recommendation for some modest deferral of
2 report date. I emphasize "modest."

3 MS. VENTO: Yes, sir.

4 MR. WALKER: Yes, sir.

5 THE COURT: He has waived his right to appeal in
6 his plea agreement. So I believe that is all we need to do
7 for this hearing today.

8 MS. VENTO: Thank you, Your Honor.

9 THE COURT: All right. We're in recess until two
10 o'clock.

11 (The proceedings were recessed at 11:14 a.m.)

12 * * *

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA

CERTIFICATE OF COURT REPORTER

I, Jillian M. Turner, RMR, CRR, CLR, Official Court Reporter, certify that the foregoing transcript is a true and correct transcript of the proceedings taken and transcribed by me in the above-entitled matter.

Dated this the 14th day of April 2015.

/s/ Jillian M. Turner
Jillian M. Turner, RMR, CRR, CLR
U.S. Official Court Reporter